

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35932

LUBBOCK AND WESTERN RAILWAY, L.L.C.—ACQUISITION AND OPERATION
EXEMPTION—WEST TEXAS AND LUBBOCK RAILWAY COMPANY, INC., AND WEST
TEXAS AND LUBBOCK RAILROAD COMPANY, INC.

Digest:¹ This decision allows Lubbock and Western Railway, L.L.C. to proceed with a notice of exemption to acquire, operate, and lease certain rail lines owned by West Texas and Lubbock Railway Company, Inc., and West Texas and Lubbock Railroad Company, Inc. after providing employees 50 days' advance notice of the transaction, rather than the full 60-day advance notice that otherwise would be required.

Decided: June 25, 2015

On June 3, 2015, Iowa Pacific Holdings, LLC, and its wholly owned subsidiary, Permian Basin Railways (collectively, IPH), filed a request for partial waiver of the 60-day labor notice requirement of 49 C.F.R. § 1150.32(e) to instead provide 50 days' advance notice. The waiver request relates to a verified notice of exemption filed in this docket by Lubbock and Western Railway, L.L.C. (LWR), a wholly owned noncarrier subsidiary of Watco Holdings, Inc. (Watco), in which LWR seeks under 49 C.F.R. § 1150.31 to acquire and lease certain rail lines from West Texas and Lubbock Railway Company, Inc., and West Texas and Lubbock Railroad Company, Inc. (WTLR), IPH subsidiary railroads, and operate them. For the reasons discussed below, the partial waiver request will be granted.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

LWR filed its verified notice of exemption² to acquire and operate approximately 9.5 miles of rail line and to lease approximately 134.75 miles of rail line from WTLR.³ The lines being acquired and operated are located between: (1)(a) mileposts 330.10 and 331.10 at Plainview, Tex., and (b) mileposts 367.250 and 368.250, at Dimmitt, Tex., on the Dimmitt Sub; (2)(a) mileposts 0.0 and 1.0 at Doud, Tex., and (b) mileposts 12.10 and 13.10 at Broadview, Tex., on the Broadview Sub; (3)(a) mileposts 6.0 and 8.5 at Doud, and (b) mileposts 62.90 and 63.90, at Seagraves, Tex., on the Seagraves Sub; and (4)(a) mileposts 4.70 and 5.70 at Whiteface Junction, and (b) mileposts 38.80 and 39.80 at Whiteface, Tex., on the Whiteface Sub. The lines being leased are located between: (1) mileposts 331.10 and 367.25 on the Dimmitt Sub, (2) mileposts 1.0 and 12.10 on the Broadview Sub, (3) mileposts 8.50 and 62.90, on the Seagraves Sub, and (4) mileposts 5.70 and 38.80, on the Whiteface Sub. LWR will also acquire by assignment approximately 5 miles of trackage rights that WTLR currently has over BNSF Railway Company's line between milepost 88.6 at Canyon Jct., Tex., and milepost 83.6 at Broadview.

Because LWR certified in its verified notice that its projected annual revenues would exceed \$5 million as a result of the transaction, 49 C.F.R. § 1150.32(e) requires LWR to send notice of the transaction to the national offices of the labor unions representing the employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so at least 60 days before the exemption can become effective. LWR filed its certification of compliance on May 19, 2015; as a result, § 1150.32(e) would preclude LWR from consummating the transaction until July 18, 2015.

IPH, however, has requested a partial waiver of the 60-day labor notice requirement so that the exemption could become effective 10 days earlier on July 8, 2015. IPH states that due diligence work and negotiations for this transaction took longer than the parties expected. IPH asserts that, as a result, it is now under pressure to consummate two other rail line acquisitions more quickly than it had originally anticipated. IPH states that one of the other new acquisitions will require IPH to finance and undertake a substantial amount of track, bridge, and right-of-way rehabilitation in order to provide continued rail service to dependent shippers and that expeditiously granting its waiver request will facilitate preserving rail service on the other two lines. Thus, IPH requests that the Board partially waive the labor notice requirement here to enable this transaction to be consummated on or after July 8, 2015.

² Notice of the exemption was served and published in the Federal Register on June 5, 2015 (80 Fed. Reg. 32,203).

³ This transaction is related to a concurrently filed verified notice of exemption in Watco Holdings, Inc.—Continuance in Control Exemption—Lubbock & Western Railway, FD 35933 (STB served June 5, 2015), in which Watco seeks Board approval under 49 C.F.R. § 1180.2(d)(2) to continue in control of LWR upon LWR's becoming a Class III rail carrier.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 1150.32(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902— Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997). The Board takes seriously the requirements of the rule. However, because the Board has received no filings opposing IPH's request for partial waiver, and LWR will provide 50 days of the 60-day notice requirement, it does not appear that the purpose behind the notice requirements would be substantially diminished if the requested partial waiver is granted. Meanwhile, the partial waiver would facilitate continued rail service for shippers on the other lines to be acquired by IPH.

Accordingly, IPH's petition for partial waiver of the 60-day notice period will be granted. By granting this partial waiver request, the earliest date that this transaction may be consummated will be July 8, 2015.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. IPH's request that the Board partially waive the 60-day notice period of 49 C.F.R § 1150.32(e) is granted as set forth in this decision.
2. LWR's exemption is effective July 8, 2015.
3. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.